

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 19 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JEROME LESLIE CLEMMONS,)	No. 06-56676
an individual, on behalf and as class)	
representative,)	D.C. No. CV-05-05525-AHM
)	
Plaintiff - Appellee,)	MEMORANDUM*
)	
v.)	
)	
CITY OF LONG BEACH, a)	
municipal corporation,)	
)	
Defendant,)	
)	
and)	
)	
COUNTY OF LOS ANGELES;)	
LOS ANGELES COUNTY)	
SHERIFFS DEPARTMENT,)	
a local public entity,)	
)	
Defendants - Appellants.)	
_____)	

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Argued and Submitted April 7, 2008
Pasadena, California

*This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Before: PREGERSON, D.W. NELSON, and FERNANDEZ, Circuit Judges.

The County of Los Angeles and the Los Angeles County Sheriff's Department (collectively, the Sheriff) appeal the district court's denial of their motion for summary judgment based upon their claim of governmental immunity under California law. We reverse and remand.

Jerome Leslie Clemmons brought this action¹ against the Sheriff after Clemmons had been held in jail from June 28, 2004 to July 19, 2004, upon an order of the Superior Court of the State of California for the County of Los Angeles.

(1) At the threshold, Clemmons argues that we do not have jurisdiction to hear the Sheriff's appeal pursuant to 28 U.S.C. § 1291, or otherwise.² We disagree. Although it is true that, in general, our jurisdiction only extends to hearing direct appeals from final orders, a classic example of the kind of order that is treated as final is an order denying a claim of immunity. Mitchell v. Forsyth, 472 U.S. 511, 524–27, 105 S. Ct. 2806, 2814–16, 86 L. Ed. 2d 411 (1985);

¹As relevant here, the action is based upon California law and the Sheriff's claim of immunity is also under California law.

²It is notable that at an earlier time, the Sheriff asked us for a writ of mandamus and we, through a motions panel, denied that request on the basis that an immediate direct appeal was available.

Armendariz v. Penman, 75 F.3d 1311, 1316–17 (9th Cir. 1996); see also Scott v. Harris, ___ U.S. ___, ___ n.2, 127 S. Ct. 1769, 1773 n.2, 167 L. Ed. 2d 686 (2007).

That applies to assertions of immunity under California state law.

California accords immunity in this genre of cases. See Cal. Civ. Proc. Code § 262.1 (hereafter § 262.1); Vallindras v. Mass. Bonding & Ins. Co., 42 Cal. 2d 149, 154–55, 265 P.2d 907, 910–11 (1954) (stating there is immunity because “[a] result subjecting [the officer] to constant danger of liability would be an intolerable hardship to him, and [would] inevitably detract from the prompt and efficient performance of his public duty.”); George v. County of San Luis Obispo, 78 Cal. App. 4th 1048, 1054, 93 Cal. Rptr. 2d 595, 599 (2000) (holding if orders are “regular on their face” sheriff is immune.) And the immunity is an immunity from suit. See Gates v. Superior Court, 32 Cal. App. 4th 481, 509, 38 Cal. Rptr. 2d 489, 505–06 (1995); cf. Richardson–Tunnell v. Sch. Ins. Program for Employees (SIPE), 157 Cal. App. 4th 1056, 1061, 69 Cal. Rptr. 3d 176, 180 (2007) (immunity claims are jurisdictional).

(2) Just as § 262.1 supports our determination that we have jurisdiction, it supports the further determination that the Sheriff is entitled to immunity from Clemmons’ claim of false imprisonment. That is apparent from the face of the statute. Clemmons argues that the Sheriff had a duty to investigate facts brought to

his attention after the Superior Court order issued. However, California law is to the contrary. As the California Supreme Court pointed out in Vallindras, it is the duty of the sheriff “to execute the orders of the court unless they are patently irregular and void”³ and the sheriff is not ““to be judged in the light of facts outside [the order’s] provisions which the [sheriff] may know.””⁴ That view has been consistently followed. Hayward Lumber & Inv. Co. v. Biscailuz, 47 Cal. 2d 716, 722, 306 P.2d 6, 10 (1957); Estate of Brooks ex rel. Brooks v. United States, 197 F.3d 1245, 1248–49 (9th Cir. 1999); Lopez v. City of Oxnard, 207 Cal. App. 3d 1, 11, 254 Cal. Rptr. 556, 561–62 (1989); Herndon v. County of Marin, 25 Cal. App. 3d 933, 937, 102 Cal. Rptr. 221, 223 (1972), overruled on other grounds by Sullivan v. County of Los Angeles, 12 Cal. 3d 710, 722 n.10, 527 P.2d 865, 872 n.10, 117 Cal. Rptr. 241, 248 n.10 (1974). In fact, when the sheriff has failed to obey a court order, liability has followed. See Sullivan, 12 Cal. 3d at 714, 722, 527 P.2d at 866–67, 872, 117 Cal. Rptr. at 242–43, 248; Shakespeare v. City of Pasadena, 230 Cal. App. 2d 375, 383–84, 40 Cal. Rptr. 863, 868–69 (1964); cf. Whirl v. Kern, 407 F.2d 781, 785, 791 (5th Cir. 1969). And, of course, cases

³42 Cal. 2d at 154, 265 P.2d at 910.

⁴Id.; cf. Hernandez v. Sheahan, 455 F.3d 772, 776–777 (7th Cir. 2006) (holding that where a sheriff is told to hold a particular person, he is not liable for doing so).

where an officer picked up the wrong person on a warrant are not apposite. See Miller v. Fano, 134 Cal. 103, 109, 66 P. 183, 185 (1901); Smith v. Madrugá, 193 Cal. App. 2d 543, 547–48, 14 Cal. Rptr. 389, 391 (1961). Thus, the Sheriff is immune pursuant to § 262.1.⁵

(3) Clemmons finally asserts that because he founds his claim in part on California Constitution art. I, § 13, which precludes illegal seizures of persons,⁶ statutory immunity cannot apply. Suffice it to say that no California court has so held, and we do not predict that the courts of California will do so. Whether the California Supreme Court will ultimately decide that there are tort claims founded on the California Constitution alone is problematic. See Katzberg v. Regents of the Univ. of Cal., 29 Cal. 4th 300, 303, 317–18, 329, 58 P.3d 339, 340, 350, 358, 127 Cal. Rptr. 2d 482, 483–84, 495–96, 504–05 (2002). But even if a constitutionally based tort was discovered, that is far from saying that the statutory immunities would not apply. The California Supreme Court has rejected claims that immunities were not available in particular cases brought before it. See Jacob

⁵The Sheriff also claims immunity under California Government Code § 821.6. Plainly, he is not entitled to it. See Gillian v. City of San Marino, 147 Cal. App. 4th 1033, 1048, 55 Cal. Rptr. 3d 158, 171 (2007); Sullivan, 12 Cal. 3d at 722, 527 P.2d at 872, 117 Cal. Rptr. at 248; see also Robinson v. Solano County, 278 F.3d 1007, 1016 (9th Cir. 2002) (en banc).

⁶The California Constitutional provision is the functional equivalent of the Fourth Amendment to the United States Constitution.

B. v. County of Shasta, 40 Cal. 4th 948, 961, 154 P.3d 1003, 1011–12, 56 Cal. Rptr. 3d 477, 487 (2007) (right of privacy); Customer Co. v. City of Sacramento, 10 Cal. 4th 368, 391, 895 P.2d 900, 915, 41 Cal. Rptr. 2d 658, 673–74 (1995) (condemnation claims). While the California Supreme Court has suggested that if a California statutory privilege or immunity conflicted with the California Constitution, the latter would prevail,⁷ it has never held that a tort claim is both founded upon that constitution and free from all immunity constraints. We doubt that the court would so hold in the search and seizure area.

In fine, the district court erred when it denied immunity to the Sheriff on Clemmons' claims under California law.

REVERSED and REMANDED.

⁷See Jacob B., 40 Cal. 4th at 961, 154 P.3d at 1011, 56 Cal. Rptr. 3d at 487.